EDITOR'S NOTE

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Supreme Court, U.S.
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No. 95-415

IN THE
Supreme Court of the United States
OCTOBER TERM, 1995

ATLANTIC MUTUAL INSURANCE COMPANY, *ET AL.*
Petitioners,
v.
COLUMBUS-AMERICA DISCOVERY GROUP,
Respondent.

On Petition for Writ of Certiorari
to the United States Court of Appeals
for the Fourth Circuit

RESPONDENT'S MOTION TO SEAL

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September 26, 1995

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12 pp

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Respondent Columbus-America Discovery Group ("Columbus-America"), by counsel, hereby respectfully moves this Court to seal the Appendix previously filed by Petitioners in this case, and to require that Petitioners submit new copies of the Appendix so as to safeguard material previously placed under seal in this matter by the United States District Court for the Eastern District of Virginia and the United States Court of Appeals for the Fourth Circuit.[1/] In support of this Motion, Columbus-America states as follows:

1. This is an admiralty action arising from Columbus-America's location and recovery of the shipwreck *SS Central America*, which sank in 1857. Columbus-America commenced an

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[1/] Pursuant to Supreme Court Rule 29.6, Columbus-America states that it has no parent companies or subsidiaries that are not wholly owned.

admiralty action *in rem* in 1987, seeking confirmation of its title to the wreck. Following Columbus-America's recovery of substantial amounts of antique gold from the shipwreck in 1989, numerous insurance companies, including Petitioners here ("Underwriters"), asserted claims that they were owners of the antique gold by virtue of allegedly having insured it some 130 years earlier. The ensuing litigation has resulted in two opinions each from the United States District Court for the Eastern District of Virginia and the United States Court of Appeals for the Fourth Circuit, and denial of an earlier petition for certiorari in this Court, No. 92-1189.

2. During the litigation, issues have arisen relating to the location of the shipwreck and the marketing of the antique gold recovered from the site. This information is highly confidential, and its disclosure could result in severe damage to Columbus-America. Disclosure of the location and layout of the shipwreck site, for example, would allow unscrupulous parties to attempt undersea theft of items from the shipwreck site. The record in this case already indicates that the shipwreck has been threatened by interlopers, making confidentiality of the wreck's location extraordinarily important. Likewise, the premature release of proprietary information about marketing and details of the antique gold could have a severe adverse impact on the marketing program.

3. In recognition of the sensitivity of the information described in paragraph 2 above, the district court and the court of appeals have entered orders sealing briefs and exhibits so as to protect the information from disclosure. For this reason, the district court also issued certain pages of its November 18, 1993 Order (Pet. App. 184a-194a), as well as its Order of January 13, 1994 (Pet. App. 203a-216a) under seal. This record material was also sealed by the court of appeals.

4. On or about September 12, 1995, Underwriters filed a Petition for Certiorari, seeking review of the June 14, 1995 decision of the court of appeals. Underwriters filed an Appendix together with this Petition, which reproduced the sealed material described in paragraph 3 above. Underwriters failed, however, to take the proper steps for preserving the confidentiality of this material. Underwriters did not file a motion for leave to file under seal as required by this Court's procedures. Instead, Columbus-America is advised that Underwriters filed their Petition and Appendix without any notice to the Clerk of this Court of the confidentiality concerns, save for a typewritten notation of "under seal" on the cover of the documents. As a result of their failure to follow the proper procedures, Underwriters have caused the entire Petition and Appendix to be docketed and made publicly available, in violation of the orders of the court of appeals and district court. Underwriters' failure to protect the sealed information threatens to cause serious harm to Columbus-America.

5. Although Underwriters apparently intended that their entire Petition and Appendix be sealed, Columbus-America does not believe that the Petition itself contains confidential information beyond that already disclosed in the Fourth Circuit's published opinions. On the same basis, Columbus-America does not seek to have its Brief in Opposition, also filed today, placed under seal. As requested by the office of the Clerk, Columbus-America has specified below the pages of the Appendix, representing sealed portions of a district court opinion and order, that should be placed under seal.

WHEREFORE, Columbus-America respectfully requests that this Court enter an Order providing as follows:

(a) That the Appendix previously filed in this case be SEALED and be used solely for purposes of the disposition of the Petition, and that the Clerk of this Court withhold all copies of this document from access by any persons not officers or employees of the Court; and

(b) That the Court require Underwriters to take appropriate steps to file new copies of their Appendix with the materials found on pages 184a-194a and 203a-216a of the Appendix properly filed under seal; and

(c) That the Court grant such other and further relief as it deems appropriate under the circumstances to protect Columbus-America from Underwriters' failure to follow this Court's procedures and the orders of the district court and court of appeals.

Columbus-America also respectfully requests that the Court fashion its Orders and procedures in this matter so as not to delay the disposition of the Petition. The continued pendency of the litigation continues to cause harm and disruption to Columbus-America's exploration activities. Columbus-America respectfully asks that the Court use the Petition and Appendix already in the Court's possession for disposition of the Petition if this is necessary to avoid delay.

Respectfully submitted,



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Counsel for Respondent

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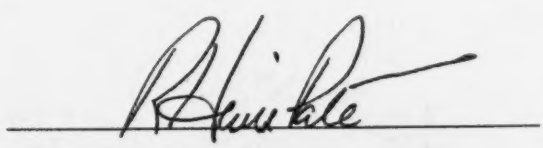
CERTIFICATE OF SERVICE

Pursuant to Supreme Court Rule 29.5, I hereby certify that this 26th day of September, 1995, three copies of the foregoing Respondent's Motion to Seal in the above styled case were deposited in the U.S. Mail, first class postage prepaid, addressed to each of the following:

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September 26, 1995

By Hand

Francis J. Lorson, Esq.
Deputy Clerk
Supreme Court of the United States
1 First Street, N.E.
Washington, DC 20543

Atlantic Mutual Insurance Company, et al
v. Columbus-America Discovery Group, No. 95-415

Dear Mr. Lorson:

Enclosed for filing in the above-styled matter are 41 copies of Respondent's Brief in Opposition. Also enclosed are an original and 11 copies of Respondent's Motion to Seal.

Please file stamp one copy of the Opposition and one copy of the Motion and return them to the bearer of this letter.

Thank you for your assistance in this matter.

Yours sincerely,

R. Hewitt Pate

rhp/cls
Enclosures
cc: Counsel of Record

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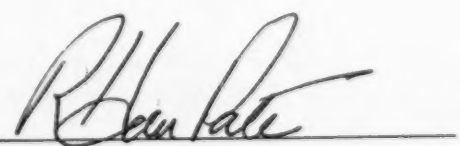
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